

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MICHAEL L. LONG,)	
)	
)	
Petitioner,)	
)	
v.)	Docket No. 18928-09 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	
)	

ORDER, ORDER OF DISMISSAL, AND DECISION

This case was called from the calendar for the Trial Session at Winston Salem, North Carolina, on March 7, 2011, for hearing on respondent's motion for summary judgment and motion to impose a penalty under I.R.C. section 6673, both filed December 15, 2010. Petitioner failed to appear at calendar call, and respondent asked the Court to dismiss petitioner's case for lack of prosecution. The Court granted respondent's oral motion to dismiss for lack of prosecution and asked respondent to file on March 10, 2011, a written motion to dismiss for lack of prosecution. After calendar call the Court received through the U.S. mail a document from petitioner titled "Petitioner's Notice of Special Visitation in Writing, Petitioner's deposition", which the Court filed on March 7, 2011. Petitioner asserted frivolous arguments as to why he was not required to make an appearance at trial, despite receiving from the Court a Notice Setting Case For Trial that stated petitioner's case may be dismissed if he fails to appear. On March 10, 2011, petitioner's case was recalled from the docket, and respondent filed a motion to dismiss for lack of prosecution.

Petitioner failed to file Federal income tax returns for 2003 and 2005. Respondent created a substitute for returns for each year. In December 2005 petitioner received a notice of deficiency for 2003. Petitioner responded by writing on the notice of deficiency that he "refutes the validity of your unattested presentment 'without dishonor' and refuse for cause UCC 25-3-501" and mailing it back to respondent. This position has long been considered frivolous by the Court. See Nagy v. Commissioner, T.C. Memo. 1994-24. Respondent did not take action following the receipt of petitioner's letter.

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In February 2007 respondent sent petitioner an additional notice of deficiency for 2003, and petitioner again responded by writing his frivolous arguments on the notice of deficiency and mailing it back to respondent. Respondent then assessed the tax for 2003. In March 2008 respondent sent petitioner by certified mail a notice of deficiency for 2005.

Petitioner did not contest either of the notices of deficiency before the Court. In September 2007 and October 2007 respondent sent petitioner a Final Notice of Intent to Levy and Notice of Your Right to a Hearing and a Notice of Federal Tax Lien Filing and Your Right to a Hearing Under I.R.C. Section 6020, respectively. Petitioner filed Forms 12153, Request for Collection Due Process Hearing (CDP request), in response to each notice. Both CDP requests contained, among other frivolous arguments, claims that petitioner did not owe any tax under the Uniform Commercial Code.

On July 16, 2010, respondent mailed petitioner a Notice of Determination Concerning Collection Action(s) Under Section 6220 and/or 6230 (notice of determination) sustaining respondent's proposed collection activity for petitioner's outstanding Federal income tax liabilities for 2003 and 2005. The notice of determination stated that petitioner's arguments were frivolous and contained a paragraph, typed in bold font, warning petitioner that the Court can impose a monetary sanction if he petitions the Court in response to the notice of determination and continues to assert frivolous arguments.

On August 10, 2010, petitioner filed a petition with the Court contesting respondent's notice of determination. The petition stated that petitioner "sent the IRS a UCC 25-3-505.4 counter demand regarding these issues and to date have not received a valid response". On December 15, 2010, respondent filed the motions that are currently before the Court. On January 19, 2011, petitioner filed responses to both of respondent's motions in which he continued to assert frivolous arguments. On January 19, 2011, petitioner filed a motion for summary judgment. Petitioner's motion again asserted frivolous arguments.

Because of petitioner's persistence in making frivolous arguments despite repeated warnings, a penalty under I.R.C section 6673 not in excess of \$25,000 is appropriate. Upon due consideration and for cause, it is hereby

ORDERED that respondent's above-referenced motion for summary judgment is denied as moot. It is further

ORDERED that respondent's above-referenced motion to impose a penalty under I.R.C. section 6673 is granted. It is further

ORDERED that respondent's above-referenced motion to dismiss for lack of prosecution is granted. It is further

ORDERED that petitioner's above-referenced motion for summary judgment is denied. It is further

ORDERED and DECIDED that respondent may proceed with collection activities as determined in the notice of determination for years 2003 and 2005 upon which this case is based; and petitioner shall pay to the United States a penalty in the amount of \$2,500 under I.R.C. section 6673.

(Signed) Juan F. Vasquez
Judge

Entered: **MAY 05 2011**